

**CALIFORNIA ENERGY COMMISSION  
TITLE 20, SECTION 1361 et seq.  
PETROLEUM INDUSTRY REPORTING**

**SUMMARY AND RESPONSE TO COMMENTS RECEIVED DURING THE  
45-DAY COMMENT PERIOD OF  
DECEMBER 3, 2004 THROUGH JANUARY 18, 2005**

To notify the public of the proposed regulatory changes, the Energy Commission posted the initial statement of reasons, the proposed regulations and the notice of proposed amendments on its website on December 3, 2004. In addition, the Office of Administrative Law noticed the proposed amendments through its Notice Register for proposed regulations on December 3, 2004.

In order to ensure widespread public notification of the proposed changes to the regulations, the Energy Commission distributed copies of the entire rulemaking package to the major industry trade groups (Western States Petroleum Association, California Independent Oil Marketers Association, California Service Station and Auto Repair Association, and Automotive United Trades Organization) on the same day the notice of the public comment period was announced by the Office of Administrative Law. In addition, the Energy Commission issued a trade media advisory in December 2004 announcing the public comment period to these proposed changes.

**AGENCY RESPONSE TO OBJECTIONS AND RECOMMENDATIONS**

The Energy Commission received three sets of comments containing requests for clarification and objections on January 18, 2005, the final day of the 45-day comment period. Responses to those items are listed in the attachment to this Statement of Reasons.

**REVISIONS TO PROPOSED REGULATIONS**

See attached proposed regulations. The "15 Day Language" revisions are marked in double underline and double strikeout. "45 Day Language" revisions are marked in single underline and single strikeout. The 15 Day Language revisions are non-substantive in nature and clarify the proposed regulations.

### **LOCAL MANDATE DETERMINATION**

The proposed regulatory action does not impose any mandate on local agencies or school districts.

### **EFFECT ON SMALL BUSINESSES**

The proposed regulatory action will not have a significant statewide adverse impact on small businesses.

### **ALTERNATIVES DETERMINATION**

The Energy Commission has determined no alternative would be more effective in carrying out the purpose for which the regulations are proposed. The Energy Commission has also determined no alternative would be as effective as, or less burdensome to, affected private persons than the proposed regulations.

## **RESPONSES TO COMMENTS, REQUESTS FOR CLARIFICATION AND OBJECTIONS RECEIVED DURING THE 45-DAY COMMENT PERIOD**

### **General Comments**

#### **1. Changing Reporting Requirements**

Comment: One commenter expressed support for the proposed regulatory changes on the condition that no past or proposed reporting requirement be eliminated or requirement diminished.

Response: The Energy Commission has proposed the elimination of annual crude oil and petroleum product forecasts (Section 1368(a)).<sup>1</sup> The crude oil and petroleum products used in California are delivered by many companies and from many locations outside of California (U.S. and non-U.S. sources). Annual crude oil forecasts collected from California refiners do not provide meaningful data in determining California's supply and demand issues.

Comment: The same commenter requested that the Energy Commission provide a 90 day advance notification period and a 90 day public comment period for every Energy Commission Public Hearing, Public Meeting, Rulemaking Proceeding, Board Commission Meeting, etc.

Response: The Energy Commission has followed the statutory and regulatory requirements established for providing notice of meetings and obtaining public comment. In the case of this regulatory proceeding, the Energy Commission provided public notice of its intent to revise the regulations in February 2003, and has met or exceeded the statutory and regulatory requirements needed for public notice and comment.

Comment: Two of the commenters requested a workshop, public meeting or hearing to discuss the proposed regulations when they filed their comments on January 18, 2004.

Response: The deadline for requesting a hearing was no later than 15 days before the close of the written comment period. No request for a hearing was received until the final day of the written comment period. A hearing to adopt the proposed regulations will be scheduled at an Energy Commission Business Meeting. The public may comment on the proposed regulations at that Energy Commission Business Meeting.

## 2. Effective Date of These Regulations

Comment: One commenter asked when the proposed regulations would take effect.

Response: The regulations will be considered for adoption at a n Energy Commission Business Meeting. If the Energy Commission adopts the proposed changes, the rulemaking package will be sent to the State Office of Administrative Law (OAL). OAL will review the package and send the new regulations to the Secretary of State. The regulations will take effect 30 days after they are filed with the Secretary of State.

The Energy Commission has worked with the public and with the petroleum industry on compliance with the current reporting requirements. The Energy Commission will continue to work with the industry when the proposed regulatory changes take effect.

## 3. Reporting Forms and Instructions

Comment: One commenter asked that the reporting forms and instructions be included with the rulemaking.

Response: Government Code section 11340.9 excludes forms and instructions from rulemakings. The Energy Commission held a workshop to review the forms and instructions and take public comment. As a result of the workshops, the Energy Commission has incorporated and/or addressed suggestions from the crude oil and petroleum product industry to clarify the instructions and the reporting forms. The Energy Commission distributed revised forms and instructions to industry and interested parties in September 2004. Most of the comments we have received have been or will be incorporated into the forms and instructions when the rulemaking is complete. The Energy Commission will continue to work with industry to ensure full comprehension and compliance.

## 4. Weekly and Monthly Reports are Redundant

Comment: One commenter suggested monthly reports can be eliminated because the Energy Commission's weekly reports collect much of the same information.

Response: The Energy Commission recognizes weekly reports can be less accurate than monthly reports since there exists a possibility that companies may be providing estimates and/or the best data, on hand, when the weekly reports are submitted.

The Energy Information Administration (EIA) published an article on the accuracy of petroleum supply data.<sup>ii</sup> In the article, the authors state:

“For the [monthly] data, respondents have a longer reporting time than the weekly, and the data are more accurate or ‘better.’ The greater length of time allows more in-depth review of the data by the respondents and EIA.”

Similar to the way the EIA uses the national data, the Energy Commission uses the weekly reporting requirement to provide timely, relatively accurate snapshots of California crude oil and petroleum products. The monthly reports are used to give greater detail – similar again to the EIA’s national reports.

### **Specific Comments**

#### **5. Definition of EPA Off-Road No. 2 Diesel Fuel (section 1363.1 (h)(2)(C))**

Comment: A commenter noted that the proposed regulation definition of EPA Off-Road No. 2 Diesel Fuel has a maximum Sulfur content of 500 ppm. The commenter states the current EPA limit is 5000 ppm.

Response: The Energy Commission will revise the definition to reflect the commenter’s concern.

#### **6. AZBOB (section 1363.1 (i)(2)(B))**

Comment: One commenter asked about the acronym “AZBOB” in the proposed regulation.

Response: The Energy Commission will correct the acronym to AZRBOB.

#### **7. Definition of Marine Fuels (section 1363.1 (l)(4))**

Comment: A commenter noted that the definition of marine fuels in the proposed regulations omits certain types of marine fuels.

Response: The Energy Commission has added a fourth definition to clearly describe the various types of Marine Fuels.

#### **8. Definition of Petroleum Coke (section 1363.1(p))**

Comment: One commenter asked why the Energy Commission defined the various types of petroleum coke products.

Response: There is more than one type of petroleum coke: marketable petroleum coke and catalyst petroleum coke. The Energy Commission’s reporting requirements apply to marketable petroleum coke. The Energy

Commission defined the various types of petroleum coke products to provide clarity.

9. Definition of Airport Retail Fuel Outlet (section 1363.2(b))

Comment: One commenter stated that the definition of Airport Retail Fuel Outlet is confusing.

Response: The Energy Commission revised the definition to improve the clarity.

10. Definition of Importer (section 1363.2(y))

Comment: One commenter stated that the definition of Importer includes a confusing reference to companies that import non-compliant fuels into California.

Response: The Energy Commission revised the definition to improve the clarity.

11. Definition of Major Petroleum Products Storer (section 1363.2 (ii))

Comment: One commenter stated the addition of the phrase “or produced” after facility in the definition of Major Petroleum Products Storer to clarify the definition.

Response: The Energy Commission has revised the definition to include the suggestion.

12. Definition of Marine Fuels Distributor (section 1363.2 (nn))

Comment: One commenter stated that the definition of marine fuel distributor in the proposed regulations does not include the type of marine fuel distributor who bunkers fuel from storage tanks.

Response: The Energy Commission clarified the definition of marine fuels distributor to include the various methods industry uses to bunker fuel.

13. Definition of Product Pipeline System (section 1363.2 (jii))

Comment: Energy Commission staff reviewed its proposed definition of a Product Pipeline System and felt it contained some ambiguity with respect to appurtenant structures and facilities that are part of a pipeline system.

Response: The Energy Commission clarified the definition of product pipeline system by adding a description of “product pipeline system” consistent with a similar definition for a Crude Oil Pipeline System that is in the current regulations in section 1363.2 (m)).

14. Information Requirements: Other Reporting Requirements (section 1365.2)

Comment: A commenter asked how ad hoc conversations can be treated as confidential without some type of follow up documentation.

Response: The Energy Commission treats all data received pursuant to Public Resources Code sections 25350-25366 (Petroleum Industry Information Reporting Act) as confidential upon receipt of the information. Public Resources Code section 25364 (b) requires all information presented to the Energy Commission to be held in confidence or aggregated to the extent necessary to assure confidentiality if public disclosure of the specific information or data would result in unfair competitive disadvantage. All requests for petroleum information data received by the Energy Commission would be subject to the procedures set forth in Public Resources Code section 25364.

15. Define “Emergency” and “Ad Hoc” (section 1365.2)

Comment: One commenter asked that the terms emergency and ad hoc be defined in the regulations.

Response: Both the current and proposed regulations (Section 1362 Definitions: General) specify that definitions are to be construed in a manner consistent with their common usage, absent an express indication to the contrary. Both the definitions of emergency and ad hoc are terms in common usage. Definitions consistent with the normal use of these terms are applicable.

16. Form and Formats of Reports (section 1367)

Comment: One commenter asked if the companies required submitting data are required to use the Energy Commission “official” reporting forms versus using Excel spreadsheets.

Response: The current Energy Commission forms are in Excel spreadsheets. Section 1367 sets forth a method that allows for the submission of data using alternative formats, subject to review and approval by the Energy Commission.

17. Financial Information (section 1368.1)

Comment: One commenter asked for clarification of the requirement to file financial information.

Response: Financial information data is required by section 1368.8 in the current regulations. This reporting requirement is renumbered and appears under section 1368.1. There is no change in the requirement to report this data.

18. Duty to Preserve Data (section 1369)

Comment: One commenter stated the section 1369 is not clear regarding the length of time a company is obligated to retain copies of the weekly and annual reports filed to the Energy Commission.

Response: The current section 1369 referred to monthly data specifically. The Energy Commission by added references to weekly and annual data in that section to clarify that the length of time companies are obligated to retain weekly and annual reports is the same as the monthly reports.

19. Support Staff (section 1370(a))

Comment: One commenter asked that the definition of Support Staff be explicitly mentioned in section 1370 of the proposed regulations.

Response: The Energy Commission will revise 1370(a) to explicitly mention Support Staff.

Comment: The same commenter asked what penalty is imposed if support staff release confidential information.

Response: The penalty for support staff releasing confidential information is not articulated in the statutory or regulatory law that applies to petroleum data collection. Nevertheless, Energy Commission employees are bound by Energy Commission policies regarding confidential information.

20. Weekly Import, Export and Intrastate Movements Report (Appendix A, section II)

Comment: One commenter asked whether the new report would result in redundant reporting by refiners, storers and marketers because some products are shipped by a marketer on behalf of a refiner.

Response: To prevent redundant reporting the Energy Commission's reporting requirements apply only to the owner of the products. This information is critical to monitor statewide and regional fuel product supplies.

21. Crude Oil Reference (Appendix A, sections II and III)

Comment: One commenter stated the term "crude oil" should appear in Appendix A section II and III in the list of products to be reported.

Response: The Energy Commission made this change.



22. Clarify “all locations” (Appendix A, section IV D)

Comment: One commenter requested clarification of the phrase “all locations within each specified region of California.”

Response: This refers to the regions defined in the regulations. The Energy Commission has clarified this requirement.

23. Requirement to Provide EIA 820 (Appendix B, section I A)

Comment: One commenter asked about a requirement for refiners to provide a copy of their EIA-820 (annual refinery capacity) Report to the Energy Commission.

Response: This requirement is part of the current reporting regulations (Appendix A, section I A) and is not a new requirement.

24. Reporting Non-Specification Fuel Deliveries (Appendix B, section II E)

Comment: One commenter asked that all transporters be required to report non-specification fuel deliveries and recommended a separate report.

Response: The Energy Commission does not believe a separate reporting form is needed to collect this data. The Energy Commission’s monthly reporting form include entry spaces for a variety of fuel types. Including a space to provide non-specification fuels, rather than creating a separate form for only one fuel is more convenient and practical for companies. This information can be reported on the same form used for other similar data.

Comment: Another commenter asked why non-specification fuel would be sold or transported in California.

Response: Retail fueling stations operating on tribal lands may be receiving non-specification fuel (non-specification fuels are those that do not meet the state fuel specification requirements). These data will quantify the extent to which this is occurring in California.

25. Deliveries of non-California grade fuels (Appendix B, section III E)

Comment: One commenter stated the phrase “by tanker truck” should be inserted as tanker trucks are the typical method used to import non-California grade fuels.

Response: The Energy Commission will revise the definition of “importer” to include “by tanker truck” and add “by tanker truck” to Appendix B, Section III E to clarify the reporting requirement.

26. Marine Fuel Distributor – Reporting Requirements (Appendix B, section III H)

Comment: One commenter stated that the marine fuel distributor reporting requirement does not include the type of marine fuel distributor who bunkers fuel from storage tanks.

Response: The Energy Commission clarified the marine fuel distributor reporting requirement to include the various types of distributors of marine fuels.

The Energy Commission clarified the regulation to address the various methods used to distribute marine fuels.

27. Monthly Sales Report Requirement Applies To Major Petroleum Product Marketers (Appendix B, section VI)

Comment: One commenter estimated that it would cost approximately \$15,000 to \$20,000 in up front costs and annualized labor costs of \$5,000 to \$6,000 to comply with this monthly reporting requirement. According to the commenter, approximately 100 companies would be required to report based on the current definition of a Major Petroleum Product Marketer (sales volume of 20,000 barrels/month).

Response: The proposed regulation requires monthly sales data reports, including wholesale and retail prices and volumes sold. This is information that companies would typically access. Transposing data from existing accounting data to the Energy Commission reporting form should take an hour or less each month.

Comment: One commenter was concerned whether there was any value collecting pricing reports from the oil marketers.

Response: This filing requirement mirrors Federal Energy Information Administration (EIA)/Department of Energy reporting requirements. Companies filing similar reports with the EIA would have compiled the data necessary to comply with our proposed regulations. The Energy Commission must collect this information to analyze significant price changes for both the branded and unbranded fuels. The definition used in the regulations (1363.2(hh)) requires the same major product marketers that file the monthly EIA sales reports to file with the Energy Commission those monthly sales reports. Data from companies marketing 20,000 barrels/month (960,000 gallons/month) are necessary for the price analyses required by statute (Pub. Resources Code, sec. 25356(a)(4)).

Comment: The same commenter stated that the Energy Commission had previously made assurances that it would not require this type of reporting when the California legislature was considering statutory changes.

Response: The Energy Commission is unaware of any commitment made during discussions at the California Legislature.

28. Dealer Tank Wagon (DTW) Data (Appendix B, Section V)

Comment: One commenter expressed concern about the usefulness of detailed DTW data.

Response: Public Resources Code section 25354 requires weekly and monthly data to be reported to the Energy Commission.

29. Incorrect Reference (Appendix B Footnote)

Footnote 1 in the History of Appendix B incorrectly referenced Appendix A (I) instead of referencing Appendix B (I and VII).

30. Standard Paper Sizes (Appendix C, section III E, IV D and VII)

The Energy Commission modified the dimensions of diagrams required pursuant to these sections from 11 by 16 inches to 11 by 17 inches to conform to standard paper size.

31. Requirement For Refiners and Pipeline Operators to File Flow Diagrams and Site Maps (Appendix C, sections III E, IV E, VII and VIII)

Comment: One commenter stated that providing flow diagrams and site maps would be very burdensome to industry.

Response: This is an annual reporting requirement. The requirement to file pipeline maps and specifications is in the existing regulations. This information is critical in the case of energy emergencies, particularly if damage has occurred at a facility. Refinery and pipeline operators' flow diagrams and site maps should be readily available for emergency response and public safety purposes.

The new regulations require an electronic version and geographic information data. Again, this information should be readily available for emergency response and public safety purposes. Likewise, geographic information data should be currently available. If they are not available, the Energy Commission will work with the companies and provide a reasonable amount of time for each company to collect, compile and submit this information.

32. Annual Retail Survey (Appendix C, section VI)

## RESPONSES TO COMMENTS

Title 20, Section 1361 et seq. Petroleum Industry Reporting

Page 12 of 13

Comment: One commenter suggested that requiring an annual retail survey could cost \$750 to \$1,000 per year per retail station to aggregate and report the data.

Response: This particular reporting form requires the name and address of the retail station, contact information, size and information on fuel storage system(s) (volumes, whether the tanks are above or under ground), types of fuels sold and types of ancillary services offered. Much of this information does not change from year to year for these sites. The Energy Commission estimates that a site owner could complete this form in less than one hour and would cost substantially less than the \$750 to \$1000 per year suggested. Our estimate is that it would cost a retail station less than \$75 per year.

Comment: The same commenter stated the proposed regulations will establish reporting requirements that create a significant financial burden on small businesses because this requirement will impact a large population (approximately 2,500 owners of 9,500 retail service stations) and because the data duplicates reports filed with other State agencies (Board of Equalization, the Division of Weights and Measures, the Water Board and other entities).

Response: Research and analysis on price and supply issues is required by Public Resources Code section 25356(a)(4): "The prices, with particular emphasis on retail motor fuel prices, including sales to unbranded retail markets, and any significant changes in prices charged by the petroleum industry for petroleum or petroleum products sold in California and the reasons for those changes." This data is very important to determine the cause and condition of regional fuel supply shortages or unusually high fuel prices.

The Energy Commission contacted the Division of Weights and Measures and the Board of Equalization to obtain these data. These data are not available from the Division of Weights and Measures. Portions, but not all, of the data are available from County Agricultural Commissions. It is likely some of the data would be available from the Board of Equalization; however, the Board of Equalization is required to hold these data confidential. Consequently, they cannot share these data with the Energy Commission.

If retail station owners already report these data (in part or in whole) to other governmental organizations they can either 1) transpose data onto the Energy Commission reporting form or 2) contact the Energy Commission to make arrangements to send in a copy of the report filed with the other government agency. In fact, the current and proposed regulations provide a means to report the data using alternative formats (1366(v)) in the proposed regulations and (1366(n)) in the current regulations.

RESPONSES TO COMMENTS

Title 20, Section 1361 et seq. Petroleum Industry Reporting

Page 13 of 13

Comment: One commenter requested a separate rulemaking be established for one of the Annual Retail reporting requirements

Response: There is no basis for holding a separate rulemaking apart from the current rulemaking. This new reporting requirement (an annual survey of retail fueling stations) was discussed in public workshops. On March 18, 2003, the Energy Commission held a workshop for public comment and suggestions on the draft forms for reporting petroleum industry data pursuant to the Energy Commission Order Number 30-0219-07. On April 27, 2004, the Energy Commission held a workshop for public comment and suggestions on the draft forms for reporting petroleum industry data. The Energy Commission incorporated comments from this workshop into the forms.

---

<sup>i</sup> All regulatory references are to title 20, California Code of Regulations.

<sup>ii</sup> Accuracy of Petroleum Supply Data by Tammy G. Heppner and Carol L. French  
Energy Information Administration/Petroleum Supply Monthly, October 2003.